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STATEMENT OF QUESTIONS PRESENTED

Whether the United States Constitution requires that a defendant in a criminal action be sentenced by the same judge who presided at the trial?

STATEMENT OF THE CASE.

Defendant, Anthony Di Giamberardino, was found guilty by a jury in the Camden, New Jersey County Court, on November 3, 1967, under Indictment No. 527-66, for bookmaking and two counts under Indictment No. 528-66, for maintaining a lottery. He was sentenced to three to five years in prison under Indictment No. 527-66. The sentences under the two counts of Indictment No. 528-66 were made to run concurrently with the sentence under Indictment No. 527-66.

Defendant was sentenced by a judge other than the trial judge.

REASONS FOR DENYING THE WRIT.

The practice of delegating the sentence of all gambling offenders to one judge was approved by the New Jersey Supreme Court in *State v. De Stasio*, 49 N. J. 247, 229 A. 2d 636 (1967), a similar petition for certiorari was denied by this court at 389 U. S. 830 (1967). Other courts have approved such sentencing procedure. *Rogers v. United States*, 350 F. 2d 297 (10 Cir. 1965); *People v. Downer*, 57 Cal. 2d 800, 22 Cal. Reptr. 347 (1962).

It is argued by defendant that he has a constitutional right to have the trial judge sentence him because only that judge has had the opportunity to see him at trial. While it may be conceded that only the trial judge has an opportunity to see the defendant at trial, modern sentencing techniques permit any judge to become thoroughly familiar with the background and history of a defendant. Rule 3:21-2 of the New Jersey Supreme Court Rules, makes a pre-sentence investigation and report mandatory in all

criminal cases prior to sentencing. Furthermore, the entire trial transcript may be made available to the sentencing judge so that he may become familiar with the facts and circumstances surrounding the commission of the crime. Finally, in the present case, the defendant did not take the witness stand so the argument that only the trial judge has had an opportunity to observe the defendant has no validity in the present application.

It is submitted that uniformity in sentencing is a legitimate goal of society and that by assigning sentencing of all offenses concerning gambling to one judge, the practice of "judge shopping" by both prosecution and defense is thwarted. It is further submitted that defendant, Anthony Di Giamberardino, has shown no prejudice at all by having been sentenced by a judge other than the trial judge.

CONCLUSION.

For the reasons stated above, it is respectfully requested that the application for a writ of certiorari be denied.

Respectfully submitted,

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